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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 687/2015*, **

Submitted by:	Z.A.H. (represented by counsel, Rajwinder S. Bhambi)
Alleged victim:	The complainant
State party:	Canada
Date of complaint:	22 June 2015 (initial submission)
Date of present decision:	11 August 2017
Subject matter:	Deportation to Pakistan
Procedural issues:	Exhaustion of domestic remedies; non-substantiation of claims; incompatibility *rationae materiae*
Substantive issue:	Non-refoulement
Article of the Convention:	3

1.1 The complainant is Z.A.H., a national of Pakistan, who is a Sunni Muslim, born on 3 November 1969.[1] He is currently in Canada and is subject to deportation to Pakistan following the rejection on 11 December 2013 of his application for refugee status. He claims that his deportation to Pakistan would constitute a violation by Canada of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. He is represented by counsel, Rajwinder S. Bhambi.

1.2 On 23 June 2015, pursuant to rule 114 (1) of its rules of procedure (CAT/C/3/Rev.6), the Committee, acting through its Rapporteur on new complaints and interim measures, requested the State party to refrain from returning the complainant to Pakistan while his complaint was being considered by the Committee. On 30 June 2016, the Committee, acting through the same Rapporteur, denied the State party's request of 7 January 2016 to lift interim measures.

* Adopted by the Committee at its sixty-first session (24 July–11 August 2017).

** The following members of the Committee participated in the examination of the communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sebastien Touze and Kening Zhang.

[1] While the complainant claims that he is a moderate Sunni Muslim, in page 13 of his submission he asserts that he belongs to "the minority Shia sect of Islam".

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Factual background

2.1 The complainant is married with four children. He used to run an air conditioning and refrigeration shop in Gulberg, in Pakistan. He had three employees, one of whom, W.B., was a Christian. Z.A.H. describes himself as a moderate Muslim who respects all religions.

2.2 The complainant explains that in his neighbourhood there was a mosque that was a hotspot for the banned Sunni extremist group Sipah e Sahaba. In May 2010, that group started campaigning against Christians, forcing people either to convert to Islam or to pay *jizya*.[2] W.B. became a target of that group. On 15 May 2010, members of the group visited W.B.'s home. They severely beat him and his family members and then destroyed the house and belongings and threatened to kill him. On that same day, at 8.30 p.m., W.B. came to the complainant to seek refuge.[3] The complainant advised W.B. to go to the police, but he was scared. The same night, the complainant, together with some of his employees, visited W.B.'s house; by that time the Sipah e Sahaba group was gone.

2.3 On 16 May 2010, the complainant went to the mosque and requested the members of Sipah e Sahaba to stop the attacks against W.B. However, the group turned against the complainant, accused him of betraying Islam, and threatened that they would register a case against him.

2.4 On 8 August 2010, 15 people of the Sipah e Sahaba group went to the complainant's shop, with iron rods, bats and other weapons. They brutally beat W.B. The complainant tried to help him but did not succeed. The complainant was accused of blasphemy for helping Christians and was brutally beaten. The group threatened the complainant, saying that he was liable to die. Both the complainant and W.B. were hospitalized. The complainant left the hospital the same day and W.B. stayed there for a month.

2.5 On 9 August 2010, the complainant reported the attacks, at the Gulberg police station. The police sub-inspector made derogatory remarks against Christians and told the complainant that he was in big trouble because, according to sharia law, he had blasphemed against the religion, and that the punishment for such conduct was death. He warned the complainant to stay away from the media, as any reference to his case there would cause him additional problems. On 16 August 2010, the complainant submitted another complaint, to the Senior Superintendent of Police in Lahore, who did not take any action. The complainant informs the Committee that the police refused to register his case against the group, which has the full support of the Taliban and the police in Pakistan.

2.6 After the incidents, W.B. left the complainant's shop and went to live away. In mid-September 2010, W.B. visited the complainant's home.[4] They were having dinner when four people with green turbans showed up to kidnap and kill W.B. They both managed to escape to a safe location.

2.7 Following that incident, the complainant was declared a blasphemer and a *kafir* (non-believer) by the Sipah e Sahaba group, as he had sheltered and employed a Christian. He and his family were threatened with death.

2.8 The complainant moved his family to a safe location with some relatives and requested a visa for Canada, which was issued on 8 October 2010. On 10 February 2011, he arrived in Canada and applied for refugee protection in Toronto in May 2011. Following the rejection of his application on 9 August 2013 by the Refugee Protection Division of the Immigration and Refugee Board of Canada, he applied for judicial review, which was declined by the Federal Court on 11 December 2013. On 8 December 2014, the complainant's application for pre-removal risk assessment was also rejected.

2.9 On 4 June 2015, the Canada Border Services Agency informed the complainant that his deportation was scheduled for 23 June 2015. On 18 June 2015, the complainant applied to the Canada Border Services Agency for deferral of his removal, which was denied on 22 June 2015.

[2] The complainant indicates that *jizya* is a forced tax to be paid by non-Muslims to live in Islamic areas.

[3] The complainant does not specify where W.B. came to.

[4] The complainant does not specify the date.

2.10 The complainant informs the Committee that the threats by the Sipha e Sahaba group have continued since he has left Pakistan. In June 2014, the Sipha e Sahaba group issued a "death fatwa", posted on the main door of his home in Pakistan, ordering his killing. On 3 August 2014, the Sipha e Sahaba group issued a second death fatwa with the same text. On an unknown date, the Sipha e Sahaba group threatened the complainant's neighbours in Gulberg (Pakistan) with death if they did not provide information as to the complainant's whereabouts. On 2 June 2015, members of the group visited the complainant's home in Gulberg to inquire about his whereabouts. They threatened to kill the complainant as soon as he was seen as he was "*wajib-ul-qatal*" ("could rightfully be killed").

The complaint

3.1 The complainant claims that his return to Pakistan would amount to a violation by the Canadian authorities of article 3 of the Convention.

3.2 The complainant fears for his life in Pakistan because he has been declared a *kafir* (non-believer) and the Sipha e Sahaba group has issued two death fatwas against him. He claims that if he is returned to Pakistan, his life will be at risk, and he will be at risk of torture and cruel, inhuman or degrading treatment or punishment at the hands of Pakistan security and intelligence agencies and of Sunni terrorist organizations. He also alleges that he will be at risk of being arrested, detained or abducted by security agencies under false and fabricated charges under the blasphemy law or sharia, and of being abducted, kidnapped, murdered, beheaded or stoned to death publicly.

3.3 The complainant argues that his life would be at risk everywhere in Pakistan, since there is no alternative safe location. He explains that in Pakistan, everyone moving to another part of the country has to register at the local police station. He claims that he will therefore be under serious threat to his life and will most likely be exposed to torture at the hands of extremist Sunni groups. Finally, the complainant alleges that the police supports those groups and will therefore not take any action to protect him.

3.4 The complainant adds that, as a failed asylum seeker, he may be the target of "State torture" and subject to illegal detention by the authorities of Pakistan.

3.5 The complainant also argues that the situation of religious minorities in Pakistan is worrisome, with Sunni extremists waging war against the religious minorities, especially Christians and Shia. In particular, he refers to a report in which it is stated that "societal intolerance persisted, including through mob attacks and actions by violent extremists. Violent extremists in some parts of the country demanded all citizens follow their authoritarian interpretation of Islam and threatened brutal consequences if they did not. They also targeted Muslims who advocated tolerance and pluralism. There were scores of attacks on Sufi, Hindu, Ahmadi, Shia, and Christian gatherings and religious sites, resulting in numerous deaths and extensive damage."[5]

State party's observations on admissibility and the merits

4.1 On 7 January 2016, the State party submitted its observations on the complaint. It submits that the complainant's communication is inadmissible under articles 22 (2) and 22 (5) (b) of the Convention and under rules 113 (b), (c) and (e) of the Committee's rules of procedure.

4.2 As regards the exhaustion of domestic remedies, the State party submits that the complainant failed to apply to the Federal Court for leave to seek judicial review of the pre-removal risk assessment decision and of the decision by the Canada Border Services Agency on his request for an administrative deferral of his removal. The State party submits that a successful judicial review application would result in an order for a reconsideration of the impugned decision.

[5] International religious freedom report, Pakistan, 2013, United States Department of State, p. 1, available from https://www.state.gov/documents/organization/222551.pdf.

4.3 The State party explains that if the Federal Court decides that there is an error of law or an unreasonable finding of fact in the decision under review, it will grant leave for judicial review and it has the authority to set the decision aside and send it back for redetermination by a different decision maker, in accordance with such directions as the Court considers to be appropriate. It also explains that it does not accept as a general proposition that its domestic system of judicial review, and in particular its Federal Court, does not provide an effective remedy against removal where there are substantial grounds for believing that a complainant faces a risk of torture. In that regard, the State party considers that recent decisions of the Committee suggest that it has misapprehended the nature of judicial review by the Federal Court, given that the State party's current system of judicial review does in fact provide for judicial review on the merits.[6]

4.4 The State party also submits that the complainant failed to make an application on humanitarian and compassionate grounds. The State party submits that that process is an effective domestic remedy which is available to the complainant and which he should be required to exhaust prior to submitting a communication to the Committee. In addition, while a stay of removal is not automatically available on an application on humanitarian and compassionate grounds, if compelling humanitarian and compassionate grounds can be demonstrated, a stay may be granted until a final decision is made on the application for permanent residence. The complainant may also request an administrative deferral of removal from a Canada Border Services Agency enforcement officer. If an application on humanitarian and compassionate grounds is determined negatively, an application to the Federal Court for leave to judicially review the decision is available, and a motion may be made to the Federal Court for a judicial stay of removal pending any application for leave and for judicial review.

4.5 The State party then argues that the communication is inadmissible on the grounds of incompatibility with the provisions of the Convention because the complainant's allegations concern threats from Sipah e Sahaba, a non-State entity that has been banned by the Government of Pakistan as a terrorist organization. The complainant has not provided any evidence that he has been or will be subjected to torture at the hands of public officials or anyone acting in an official capacity, or that the State concerned has consented to or would consent to or has acquiesced to or would acquiesce to such mistreatment. In this connection, it refers to the jurisprudence of the Committee, according to which communications concerning non-State actors have consistently been held inadmissible as falling outside the scope of article 3 of the Convention.[7]

4.6 The State party also submits that the complainant has not sufficiently substantiated, for the purpose of admissibility, any of his allegations that he faces a real and personal risk of torture such that his removal to Pakistan would be a violation of article 3 of the Convention. It explains that domestic decision makers found that the complainant was not credible. Giving detailed reasons, the Refugee Protection Division expressed concerns about the plausibility of the complainant's allegations, ultimately concluding that he was not a credible witness. In particular, the Division found several key aspects of the complainant's claim to be implausible and noted several discrepancies. For example, it found that the complainant contradicted himself when speaking about the reason why a case of blasphemy would be registered against him and not against the three other individuals who accompanied him to the police station with the same purpose of protecting W.B. against the Sipah e Sahaba group. It also found that his testimony regarding the circumstances of W.B.'s attempts to seek protection and assistance from the complainant lacked credibility and plausibility.

4.7 The Refugee Protection Division rejected the complainant's assertion that his opposition to the actions of Sipah e Sahaba with regard to the attack on W.B. were a reflection of his imputed political opinion, stating that an individual who is claiming

[6] The State party refers to communication No. 319/2007, *Singh v. Canada*, decision adopted on 30 May 2011, para. 8.8, and communication No. 520/2012, *W.G.D. v. Canada*, decision adopted on 26 November 2014, para. 7.3.

[7] The State party refers to communication No. 177/2001, *H.M.H.I. v. Australia*, decision adopted on 1 May 2002, paras. 6.6 and 7.

protection on the basis of political opinion must show that he has a fear of persecution for holding opinions different from those of a government which has demonstrated that it will not tolerate such opinions. The Division noted that opposition to the views and actions of extremist groups such as Sipah e Sahaba is widespread among the general population in Pakistan, and the Government of Pakistan had made efforts to suppress Sipah e Sahaba. According to the State party, such intervention is indicative of the opposition of the Government of Pakistan to the group. The Division noted that the complainant had testified to having knowledge of previous police raids against Sipah e Sahaba's offices and mosque, and therefore found that State protection was available with regard to the actions of that group. The Division also found that there was no evidence to suggest that the complainant would fear the authorities of Pakistan or that he was at risk of being prosecuted by the authorities because of his identity as a Sunni Muslim or because of his opposition to the actions of Sipah e Sahaba in relation to their treatment of W.B.

4.8 The Refugee Protection Division and the pre-removal risk assessment officer had also determined that the complainant had an internal flight alternative available to him in Pakistan, noting that his family originally moved to Sialkot and that there was no evidence to explain why the complainant did not move with them or that they were in danger there. The Division noted that the complainant's family subsequently moved back to Lahore and there was no evidence that they were in danger at the hands of Sipah e Sahaba upon their return. The Division also noted that W.B. had relocated to Karachi. The complainant was questioned about why he could not move to Karachi or Islamabad and he responded that his family now lived in Lahore. The Division determined that, in case he felt unsafe in Lahore, he could live safely in Karachi or Islamabad.

4.9 As the Refugee Protection Division's analysis of the evidence and the conclusions made were appropriate and well founded, the Federal Court declined to interfere with the Division's decision. In the complainant's case, the State party argues that a thorough assessment of his allegations was carried out by all domestic decision makers who considered his applications.

4.10 The State party also argues that there are important inconsistencies in the complainant's allegations, which should lead the Committee to carefully scrutinize the communication. In particular, the State party considers that the Committee should not believe the complainant's allegations that he is the subject of a fatwa from Sipah e Sahaba because he has provided inconsistent information in that regard: (a) in his communication, he claims that Sipah e Sahaba posted fatwas on the door of his home in Pakistan in June 2014 and again on 3 August 2014. However, the documents on which he relies to support this claim provide inconsistent information. There is no mention of any fatwa in the letter from his lawyer, nor in the declarations of his brother or his neighbour. In addition, in the affidavits of his wife, his brother-in-law and his brother, it is said that the fatwa was issued in June 2011; (b) in his request to the Canada Border Services Agency for an administrative deferral of removal, dated 18 June 2015, he says that Sipah e Sahaba posted a fatwa "in the locality in Pakistan where [the] applicant was residing and running his business in June, 2010", while in his pre-removal risk assessment application, he claimed that Sipah e Sahaba had posted a fatwa on the door of his shop in June 2014; and (c) there is no mention of a fatwa on the complainant's personal information form dated 15 June 2011, nor was there during his testimony before the Refugee Protection Division, which took place on 4 July 2013.

4.11 The State party considers that the Committee should not believe the complainant when he claims that Sipah e Sahaba declared him "a blasphemer and *kafir*", given that he did not make this claim on his personal information form, on his pre-removal risk assessment application or in his request to the Canada Border Services Agency for a deferral of his removal. Additionally, the complainant claims that Sipah e Sahaba has the full support of the police in Pakistan, while in his request to the Canada Border Services Agency for a deferral of removal he did not make such a claim but stated that Sipah e Sahaba was a "banned Sunni hardliner terrorist organization". The State party also notes that the complainant does not make this claim in his personal information form or in his pre-removal risk assessment application.

4.12 The State party also submits that the complainant is inconsistent in the way he describes his religious affiliation: at times he describes himself as Sunni Muslim, while submitting on other occasions that he belongs to the minority Shia sect of Islam and may be killed by radical members of the Sunni sect of Islam.

4.13 Finally, the State party argues that the complainant has not provided any credible evidence that he was tortured in the past within the meaning of the Convention. The incidents described by the complainant do not reach the level of severity required to meet the definition of torture under article 1 of the Convention: the complainant alleged that he was assaulted on 8 August 2010, when he intervened to help his employee W.B. Although the complainant allegedly sustained injuries which required some medical attention, he has not provided any medical analysis to show how those injuries would amount to torture. Even if the nature of the attack described by the complainant constituted cruel, inhuman or degrading treatment or punishment, contrary to the obligations of Pakistan under article 16, the State party notes that the article 3 obligation of non-refoulement applies only with respect to a real risk of being subjected to torture.

4.14 In addition, the complainant has provided no evidence to show that Sipah e Sahaba was acting in an official capacity, on behalf of officials of Pakistan or with the consent or acquiescence of officials of Pakistan. The complainant claims that he attempted to submit a complaint with the police about what happened on 8 August 2010 and that the police would not register the complaint or take any action against the individuals involved. Although objective country reports note that the police of Pakistan can be ineffective at addressing allegations of sectarian violence, the complainant has not demonstrated that any failure by the police to act in his situation was tantamount to consent or acquiescence. The State party considers that, unlike in the case of *Dzemajl et al. v. Yugoslavia*,[8] there is no evidence, and the complainant does not allege that the police were informed of any specific threats faced by the complainant or that they were present at the time but failed to intervene. The failure of the police to take action with respect to the incident complained of by the complainant is insufficient to support an allegation that the police either consented to or acquiesced to the actions of Sipah e Sahaba in relation to either W.B. or the complainant. Indeed, the complainant testified before the Refugee Protection Division that he was aware that the police had previously raided Sipah e Sahaba's offices and mosque.

4.15 The State party considers that although the complainant claims that he came to Canada to save his life, his own actions belie that claim. The State party informs the Committee that it issued a visitor's visa to the complainant on 8 October 2010, but he did not leave Pakistan until 10 February 2011. He did not claim refugee protection immediately upon arrival in Canada. Instead, he waited until after his visa had expired on 9 April 2011 before making a claim for protection on 20 May 2011. The State party considers that the complainant's past behaviour is not consistent with that of someone who has a fear for his life.

4.16 The State party also submits that all domestic decision makers determined that the complainant would not be at personal risk of torture upon his return to Pakistan. The complainant alleges that, having been named a blasphemer and *kafir*, he will be killed if he returns to Pakistan. To support that allegation, he claims that "the majority" of scholars or clerics in Islam openly support waging a war on infidels. In that connection, he relies on a quote from Abu Hamza al-Masri, a former cleric who preached Islamic fundamentalism and militant Islamism.[9] He also relies on an article reporting on the assassination of the Governor of Punjab on 4 January 2011, and states that if a high-ranking official could be killed then he could also face the same fate. However, the State party considers that it is clear from the actions of the Government of Pakistan, as described in the article, that "it does not condone vigilante violence by Sunni extremists".[10]

[8] See communication No. 161/2000, decision adopted on 21 November 2002, para. 9.2.

[9] The State party explains that Al-Masri is a convicted terrorist currently serving a life sentence in the United States of America and cannot be considered a credible source of information on Islam.

[10] The State party refers to the press article submitted by the complainant reporting on the assassination of the Governor of Punjab, Salman Taseer, on 4 January 2011, which he used in order to argue that if a high-ranking official could be killed then he could also face the same fate.

4.17 The complainant has also not provided any objective and credible evidence to demonstrate that he is at personal risk of facing severe pain or suffering by, or with the consent or acquiescence of, a public official or other person acting in an official capacity. Despite his claim that he is at serious risk of torture by the police, the country's security and intelligence agencies and/or the country's immigration authorities, the complainant has provided no evidence to substantiate that allegation. He was not subjected to torture in the past by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. His concerns about being subjected to torture in the future are related to local members of Sipah e Sahaba. There is also no evidence that the complainant has engaged in political or other activity within or outside Pakistan that would make him particularly vulnerable to a risk of torture.

4.18 In the event that the Committee believes it necessary to consider the general human rights situation in Pakistan despite the fact that the complainant has not established that he would be at risk of torture if returned to Pakistan, the State party observes that although recent reports criticize the Government of Pakistan for not effectively addressing sectarian violence, some efforts have been made by State authorities to denounce extremist sectarian groups and to monitor and criminalize their activities. For example, in 2009 and 2010, the then Interior Minister, Rehman Malik, identified Sipah e Sahaba as being involved in terrorist activities in Pakistan and warned of strict action that the Government would take against the group, including monitoring their activities and investigating and prosecuting incidents believed to involve the group. In addition, since September 2008, the Government has taken steps towards ensuring religious freedom and tolerance, including the establishment of a 24-hour hotline to report acts of violence against religious groups. It has also implemented new legislation to establish a federally empowered structure with special federal courts, prosecutors, police stations and investigation teams, in order to support the investigation and prosecution of terrorist offences.

4.19 The State party submits that the complainant relies on a number of reports addressing the situation of religious minorities in Pakistan to support his assertion that Sunni extremists are waging a war against religious minorities, especially Christians and Shia. However, it notes again that, except for that one reference, the complainant has always referred to himself as being a Sunni Muslim and, therefore, a member of the majority religious group, and concludes that reports of violence against religious minorities are not relevant to his allegations.

4.20 The State party also submits that the complainant has not substantiated his allegation that he would be at risk of torture upon his return to Pakistan as a failed refugee claimant. In his communication, the complainant claims that he "might be" a potential victim of police torture and illegal detention. The State party submits that the domestic authorities could not find any report of interviews, detentions or disappearances of failed Pakistani refugee claimants upon their return to Pakistan which occurred after 2005.

Complainant's comments on the State party's observations

5.1 In his submission of 18 March 2016, the complainant reiterates his initial claims. Regarding the State party's argument that he is not under threat from the Government of Pakistan or its officials, he states that the Government of Pakistan is indirectly involved in the persecution. He reiterates that when he approached these officials to seek justice, he was not helped and therefore was forced to leave Pakistan. He adds that the country's police and Government are reluctant to take any action against Sunni terrorist organizations as these are supported by the Sunni-majority Government through its intelligence agency, Inter-Services Intelligence (ISI). The complainant also submits that he is "a witness in the fight against the terrible impunity and brutal killings by Sunni terrorist organizations in Pakistan" and that "his family is also forced to suffer the same torture and harassment" by the group in Pakistan.

5.2 The complainant argues that the situation in Pakistan is worse than ever, as every day, Sunni organizations, particularly the Sunni Taliban, are killing innocents: (a) from 8 to 10 June 2014, Tehrik-e-Taliban gunmen laid siege to Jinnah International Airport in Karachi, causing deaths and injuries; (b) in December 2014, the Taliban killed more than 145 schoolchildren in a cantonment area of Peshawar; (c) in January 2015, the Taliban

blasted a Shia mosque and killed 40 Shia; and (d) on 13 February 2015, the Taliban blasted a Shia mosque and killed 20 Shia and injured dozens. In that connection, the complainant informs the Committee that the Government of Canada, through its department for foreign affairs and international trade, issued travel advice in respect of Pakistan warning against all non-essential travel to Pakistan due to the serious threats.[11]

5.3 The complainant explains that the security situation remains fragile and unpredictable and that the terrorist threat remains very high. He adds that heightened security measures are currently in place throughout the country and that checkpoints may be set up without warning. He refers to the 2015 United States Department of State report on religious freedom in Pakistan, in which it is stated that sectarian violence and discrimination against religious minorities continued.[12] He submits that the Government's respect for and protection of the right to religious freedom remains poor and its limited capacity and will to investigate or prosecute the perpetrators of attacks against religious minorities allows the climate of impunity to persist, hence the threat to his life in Pakistan is real and genuine. The complainant states that the domestic tribunals in the State party have recognized the type of abuse that is still taking place in Pakistan and why it is taking place. He refers to the judgment of the Federal Court in *Kaur v. Canada (Minister of Citizenship and Immigration)*[13] and submits that the facts are quite similar to his case.

5.4 The complainant adds that the general position of the Office of the United Nations High Commissioner for Refugees on the issue of internal flight alternatives is that when the persecutors are agents of the State, there is no valid internal flight alternative.[14] Many times, victims of torture witness the forced disappearance of immediate family members and they are at risk anywhere in Pakistan. The complainant submits that the internal flight alternative is not a safe option for him, as Sunni hardliners are eagerly looking for him and they are spread all over Pakistan.

5.5 The complainant maintains that the State party is wrong to say that Canadian legal procedures provide a real guarantee against a violation of article 3 of the Convention. He reiterates that there is clearly a substantial risk of torture for him, that he has clear marks of torture on his body and that he has doctor's letters from Pakistan confirming the torture he suffered in Pakistan.[15] He claims that his case clearly shows the insufficiency of the existing Canadian procedures to avoid violations of the fundamental rights of torture victims. He has submitted strong evidence, such as medical reports, affidavits and photographs, regarding the torture, ill-treatment and threat to the lives of himself and his family in Pakistan.

5.6 The complainant considers that there are clear problems with the effectiveness of the State party's procedures. Regarding the State party's argument that he still has the possibility of making an application on humanitarian and compassionate grounds, he submits that the procedure does not provide for any stay of removal unless it is approved, which may take three to four years. The complainant argues that he has established a prima facie case, and that the manner in which his evidence has been analysed by the State party is clearly arbitrary and the way it is considered amounts to a denial of justice.

State party's observations on the complainant's comments

6.1 By note verbale of 17 January 2017, the State party submitted its observations on the complainant's comments. The State party reiterates its arguments and concludes that the communication is inadmissible, and argues that State protection and an internal flight alternative are available to the complainant, and that his allegations are therefore without merit.

6.2 The State party considers that certain allegations contained in the complainant's supplemental submission are inaccurate, misleading, or inconsistent with his previous

[11] The complainant does not provide the source of information.

[12] Available from https://www.state.gov/documents/organization/256527.pdf.

[13] 2005 FC 1491, available from http://canlii.ca/t/1m0m6.

[14] The complainant does not provide any reference.

[15] The complainant includes some pictures, allegedly of him with injuries, in his complaint.

allegations. In that connection, the State party submits that the complainant now alleges that he was a victim of torture because he tried to get justice against terrorists and is a witness in the fight against the terrible impunity and brutal killings by Sunni terrorist organizations in Pakistan, but has provided no evidence to support this allegation. The State party also submits that this allegation differs considerably from what the complainant said in his initial complaint to the Committee, in addition to being different from what he testified before the Refugee Protection Division and wrote in his pre-removal risk assessment application. The complainant has never alleged that he witnessed any brutal killings, let alone brutal killings by Sunni terrorist organizations, in Pakistan. In addition, he previously claimed to have had contact with only one Sunni organization in Pakistan, a local branch of Sipah e Sahaba. Furthermore, he previously alleged that he had been assaulted by members of that local branch because he had intervened in a physical altercation between his Christian employee and some members of the local branch.

6.3 In regard to the complainant's claims that his family is "forced to suffer the same torture and harassment" by the group in Pakistan, the State party submits that he provides no evidence to support this statement, which is different from the allegations contained in his initial complaint, where he stated that he had shifted his family to a safe location with relatives prior to coming to Canada. The State party submits that these new allegations of risk that the complainant is now advancing should cause the Committee to be very concerned about the credibility of the communication as a whole.

6.4 The State party adds that the complainant makes numerous inaccurate and/or misleading statements, seemingly to bolster his complaint. For instance, it considers that the complainant misrepresents the facts and findings from *Kaur v. Canada (Minister of Citizenship and Immigration)* (see para. 5.3 above) when claiming that the Kaur case is a representative of domestic tribunals in Canada having "recognized the type of abuse still taking place" in Pakistan "and why it is taking place". He also claims that the Kaur case contains "facts that are quite similar" to his own case. The State party notes that the Kaur case is quite different from the complainant's situation: it involves allegations with respect to India, not Pakistan, it addresses police abuses, not the actions of a terrorist organization, and it involves the persecution of human rights advocates, which is not descriptive of the complainant.

6.5 In regard to the complainant's statement that the State party's decision makers rejected pertinent evidence without reason and that the State party's initial submission is contrary to fundamental justice, the State party asserts that the complainant has provided no evidence to support his claims that the manner in which his allegations were analysed by domestic decision makers was clearly arbitrary or amounted to a denial of justice. The State party adds that the complainant has not provided any specific examples of "arbitrariness" or "denial of justice".

6.6 The State party also argues that the complainant provides no evidence to support his allegation that he faces any risk from security and intelligence agencies of Pakistan, or from multiple Sunni terrorist organizations or multiple generic Pakistani terrorist organizations. The most that can be said is that the complainant was assaulted by members of the local branch of Sipah e Sahaba, which is a non-State actor. The State party reiterates that the complainant has provided no evidence to substantiate that any pain that he may have suffered was "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

6.7 The State party also observes that the complainant has provided no evidence to substantiate his claim that terrorist organizations in Pakistan are supported by the Sunni-majority Government, through its intelligence agency ISI. Nor has he presented evidence to support his allegation that the Government of Pakistan is reluctant to take action against terrorist organizations in Pakistan.

6.8 The State party considers that the complainant's allegations regarding current country conditions are not substantiated: he seems to rely on a Canadian website, www.travel.gc.ca, to substantiate his allegations regarding the current situation in Pakistan,

noting that the site warns against non-essential travel due to serious threats.[16] The State party considers that the complainant clearly misapprehends the purpose of that website, which is to provide Canadians travelling and living abroad with general information on security issues so that they can make informed decisions about their travel to a foreign country. That kind of general information cannot be considered as sufficient evidence to substantiate the claim that the complainant would face a real and personal risk of torture should he return to his country of origin.

6.9 With respect to the current human rights situation in Pakistan, the State party relies on its initial submission and adds that, based on recent country reports, it would seem that the human rights situation in Pakistan is very similar to when the State party provided the Committee with its initial submission in January 2016, although, according to both the Home Office, of the United Kingdom of Great Britain and Northern Ireland, and the European Asylum Support Office, the situation did improve in 2015 compared to other years.[17] Even if the human rights and security situation in Pakistan remains challenging, the Government continues to make best efforts to rectify the situation.

6.10 The State party refers to the complainant's supplemental submission according to which, when the persecutors of a torture victim are agents of the State or where a torture victim has witnessed the forced disappearance of immediate family members, the victim is at risk throughout Pakistan and an internal alternative flight would not be available. The State party considers that neither of these factors applies to the complainant. As regards his allegation that the risk to his life from Sunni terrorists is everywhere in Pakistan, the State party considers that the complainant has not provided any evidence to substantiate that allegation.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim submitted in a complaint, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.2 The Committee notes the State party's argument that the complaint should be declared inadmissible under article 22 (5) (b) of the Convention as the complainant has not exhausted all available domestic remedies. The Committee notes the State party's contention that the complainant failed to apply to the Federal Court for leave to seek judicial review of the pre-removal risk assessment decision and of the decision by the Canada Border Services Agency on his request for an administrative deferral of his removal.

7.3 In this context, the Committee recalls its jurisprudence according to which such a judicial review is mainly based on procedural issues and does not involve a review of the merits of the case.[18] The Committee notes that the complainant has submitted applications to the Immigration and Refugee Board of Canada and the Federal Court, as well as an application under the pre-removal risk assessment procedure, and considers that it would be unreasonable to require that the complainant also apply for judicial review of the pre-removal risk assessment decision and of the decision by the Canada Border Services Agency on his request for an administrative deferral of his removal.

[16] Government of Canada, "Travel advice and advisories", available from https://travel.gc.ca/travelling/advisories.

[17] Home Office, United Kingdom, "Country information and guidance: Pakistan: security and humanitarian situation" (November 2015), sect. 5.3, p. 11, "Trends in 2015", available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/566239/PAK_Security_and_humanitarian_situation.pdf, and European Asylum Support Office, *EASO Country of Origin Information Report: Pakistan Security Situation* (July 2016), sect. 1.3, p. 23, available from https://coi.easo.europa.eu/administration/easo/PLib/BZ0416539ENN.pdf.

[18] See communication No. 582/2014, *X.S. v. Canada*, decision adopted on 1 December 2016, para. 8.2.

7.4 The Committee also observes the State party's argument that the complainant failed to make an application on humanitarian and compassionate grounds. In that connection, the Committee recalls that the application on humanitarian and compassionate grounds does not constitute, in any case, an effective remedy for the purposes of admissibility, given its non-legal nature and the fact that it does not stay the removal of a complainant.[19] Accordingly, the Committee considers that it is not precluded by the requirements of article 22 (5) (b) of the Convention from considering the communication on the merits.

7.5 The Committee observes the State party's argument that this complaint falls outside the scope of article 3 of the Convention, because the allegations concern threats from Sipah e Sahaba which is a non-State entity that has been banned by the Government of Pakistan as a terrorist organization. The Committee notes the State party's contention that the complainant has not provided evidence to substantiate the claim that the assault by the Sipah e Sahaba group was "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" and that he would face a real and personal risk of torture in Pakistan. In that connection, the Committee notes the State party's submission that the complainant has not provided any objective and credible evidence to demonstrate that he is at personal risk of being afflicted with severe pain or suffering by or with the consent or acquiescence of a public official or other person acting in an official capacity.

7.6 The Committee also observes the complainant's allegations that the Government of Pakistan is involved indirectly in the persecution; that when he approached the police to seek support and justice, nothing was done and he did not get any form of protection, and that he therefore had to leave Pakistan. The Committee also notes the complainant's contention that the country's police and Government are reluctant to take any action against Sunni terrorist organizations as these are supported by the Sunni-majority Government through its intelligence agency ISI.

7.7 The Committee recalls that it has, in its jurisprudence and in its general comment No. 2 (2007) on the implementation of article 2, addressed the risk of torture by non-State actors and the failure on the part of a State party to exercise due diligence to intervene and stop abuses impermissible under the Convention, for which it may bear responsibility.[20] In its general comment No. 2, the Committee recalled that the failure "to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity". However, in the present case, the Committee considers that the complainant has failed to provide sufficient evidence to substantiate his allegations that the Government of Pakistan is involved in the alleged persecution by the Sipah e Sahaba group. The Committee also considers that the complainant has failed to substantiate the alleged risk of torture by the Pakistani police, security and intelligence agencies or immigration authorities. The Committee therefore concludes that the complainant's communication is inadmissible for lack of substantiation, in accordance with article 22 of the Convention and rule 113 (b) of its rules of procedure.

8. The Committee therefore decides:

(a) That the communication is inadmissible under article 22 of the Convention;

(b) That the present decision shall be transmitted to the complainant and to the State party.

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[19] See, among others, communication No. 343/2008, *Kalonzo v. Canada*, decision adopted on 18 May 2012, para. 8.3.

[20] See the Committee's general comment No. 2 (2007) on the implementation of article 2, at para. 18. See also communication No. 322/2007, *Njamba and Balikosa v. Sweden*, decision adopted on 14 May 2010, para. 9.5.